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Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1933.

No. 400

CITY OF MARION, ILLINOIS, A MUNICIPAL CORPORATION; CONTINENTAL ILLINOIS BANK AND TRUST COMPANY, A CORPORATION; THE FIDELITY AND CASUALTY COMPANY OF NEW YORK, A CORPORATION, AND RAY C. CARROLL, AS TREASURER OF THE CITY OF MARION, ILLINOIS,

Petitioners,

versus

BEN SNEEDEN, AS RECEIVER OF THE CITY NATIONAL BANK OF HERRIN, ILLINOIS,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT, AND SUPPORTING BRIEF.

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No. .....

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Petitioners,

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BEN SNEEDEN, AS RECEIVER OF THE CITY NATIONAL BANK OF HERRIN, ILLINOIS,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT, AND SUPPORTING BRIEF.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioners respectfully pray for a writ of certiorari to review the judgment of the Circuit Court of Appeals for the Seventh Circuit, reversing the District Court for the Eastern District of Illinois, and holding illegal and void a pledge of assets by the City National Bank of Herrin, Illinois, as security for public moneys of the City of Marion, Illinois.

Questions Presented.

1. Does a National bank have general power to pledge assets as security for deposits of public moneys of states or political subdivisions thereof?

2. Does the amendment of June 25, 1930, to Section 5153 Revised Statutes, limit the power of a national bank to pledge assets as security for deposits of public moneys of a state or political subdivision thereof, to that possessed by state banks in the state in which the national bank is located?

3. Do state banks of Illinois have general power to pledge assets as security for deposits of public moneys of the state or any political subdivision thereof?

Petitioners believe that the first and third questions should be answered in the affirmative and the second in the negative.

Circuit Judge Sparks, in whose opinion in the Circuit Court of Appeals (64 Fed. (2d) 721) District Judge Lindley concurred, expressed doubt as to the power of national banks generally to make a pledge such as is here involved; he held that under the amendment of June 25, 1930, a national bank in Illinois could give security only to the same extent as could Illinois state banks, and that Illinois state banks had no such general power.

Circuit Judge Alschuler dissented; he held, as did Judge Wham of the District Court (58 Fed. (2d) 341), that national banks possessed such power prior to the amendment; that the amendment did not operate as a limitation on powers previously existing; and that Illinois banks do possess such power.

STATUTES INVOLVED.

Federal Statutes.

By Section 8 of the National Bank Act of June 3, 1864, Chap. 106, 13 Stat. 99, 101, it was provided that national banks may

> "make contracts, * * * exercise * * * all such incidental powers as shall be necessary to carry on the business of banking by discounting and negotiating promissory notes, drafts, bills of exchange and other evidences of debt; by receiving deposits; * * *."

This provision was re-enacted without change in Sec. 5136 of the Revised Statutes and is still in force (12 U. S. C. A. Sec. 24).

By Section 45 of the same National Bank Act of June 3, 1864, 13 Stat. at p. 113, it was provided that the Secretary of the Treasury should require national banks to give

> "satisfactory security, by the deposit of United States bonds and otherwise, for the safe-keeping and prompt payment of the public money deposited with them, * * *."

This provision was reenacted without change in Section 5153 of the Revised Statutes and is still in force (12 U. S. C. A. Sec. 90). There was added to it by the amendatory act of June 25, 1930, Chap. 604, 46 Stat. 809, the following:

> "Any association may, upon the deposit with it of public money of a state or any political subdivision thereof, give security for the safekeeping and prompt payment of the money so deposited, of the same kind as is authorized by the law of the State in which such association is located in the case of other banking institutions in the State."

Acts of Congress providing for the deposit of various public funds in state as well as national banks, and in Federal Land and Joint Stock Land banks, requiring the official making the deposit to take collateral security from the bank, are referred to in the Appendix (*infra*, pp. 19-21).

Illinois Statutes.

The Constitution of 1870 (Section 5, Article XI) provides that no statute "authorizing or creating corporations * * * with banking powers, whether of issue, deposit or discount, nor amendments thereto" shall become effective without a referendum.

The General Banking Act of 1887 (Laws 1887, p. 89) permitted organization of banks "for purposes of * * * deposit." This provision is continued in the Banking Act of 1919 (Laws 1919, p. 224; Cahill's Ill. Rev. Stat. (1931) Chap. 16a, Par. 1). Both Acts were approved on referendum.

Section 10 of the State Depositary Act (Laws 1919, p. 954; Cahill's Ill. Rev. Stat. (1931) Chap. 130, Par. 20) provides for the deposit of state funds in both national and state banks, and that:

> "No money in the State Treasury shall be deposited in any bank approved as a depositary under the terms of this Act until such bank shall have deposited security with the State Treasurer equal in market value to the amount of moneys deposited."

Provision was not made for submitting this act to a referendum.

Section 11 of the Banking Act as amended in 1929 (Laws of 1929, p. 174; Cahill's Ill. Rev. Stat. (1931) Chapter 16a, Par. 11), approved in 1930 on referendum, provides that a receiver of a closed bank:

> "shall deposit daily all money collected by him in any state or national bank selected by the auditor, who shall require of such depository satisfactory securities or satisfactory surety bond for the safe-keeping and prompt payment of the moneys so deposited."

Section 51 of the Commission Form of Municipal Government Act of 1910 (Laws 1910, p. 12; Cahill's Ill. Rev. Stat. (1931) Chapter 24, Par. 374) is in the appendix (*infra,* p. 22). It was not submitted to referendum.

STATEMENT.

Petitioner, Carroll, Treasurer of Marion, Illinois, was required by statute to give a surety bond to the city. He applied to petitioner, Fidelity and Casualty Company of New York, to execute his official bond as surety, which the company agreed to, provided Carroll would procure a bank which would give collateral security for his deposits of the city's public funds. With knowledge of this condition and before execution by the Casualty Company of Carroll's bond, City National Bank of Herrin, Illinois, deposited certain of its assets with petitioner, Continental Illinois Bank and Trust Company, as security for moneys to be deposited in the Herrin bank by Carroll as City Treasurer. Thereupon the company executed Carroll's bond as surety and Carroll then began making deposits of the city's money in the Herrin bank. These arrangements were consummated on August 28, 1931. City National Bank was solvent at that time and its officers were fully authorized to act for it in this transaction.

Thereafter, on October 21, 1931, City National Bank was closed and respondent was appointed receiver. At that time there was on deposit with it $16,430 of the public moneys of the City of Marion. Respondent, receiver, demanded the bank's securities and his demand not being complied with, filed his bill in equity, making petitioners parties defendant, seeking to have the pledge declared illegal and void and to obtain return of the securities. Defendants answered the bill and the case was tried on an agreed statement of facts. (R. 31.) The District Court denied the relief prayed (R. 67-71) but upon appeal the Circuit Court of Appeals for the Seventh Circuit by a divided court, Judge Alschuler dissenting, reversed the District Court, held the pledge illegal and void, and directed return of the securities. Rehearing was denied June 1, 1933. (R. 128.)

Reasons for Allowance of Writ.

1. The Circuit Court of Appeals has decided important questions of Federal law which have not been, but should be, settled by this Court; and has decided them in a manner at variance with the opinions of the 4th and 5th Circuit Courts of Appeals,[1] and in conflict with the weight of authority.[2] The questions are:

> (a) Does a national bank have general power to pledge assets as security for deposits of public moneys of states or political subdivisions thereof?
>
> (b) Does the amendment of June 25, 1930, to Section 5153 Revised Statutes limit the power of a national bank to pledge assets as security for deposits of public moneys of a state or political subdivision thereof, to that possessed by state banks in the state in which the national bank is located?

The decision is of far reaching importance to municipalities and other public bodies having deposits made in reliance on pledges of collateral security similar to that here involved; to bank depositors throughout the country; to receivers and conservators and to the Comptroller of the Currency for guidance in liquidating or reorganizing banks; and to the public generally in providing hereafter for the safeguarding of public funds.

2. The Circuit Court of Appeals decided impor-

[1] See opinion of the 5th Circuit Court of Appeals in *Pottorff* v. *El Paso-Hudspeth Counties Road District of Texas*, 62 Fed. (2d) 498, and dicta of Judge Parker in the 4th Circuit Court of Appeals in *Burrowes* v. *Nimcocks*, 35 Fed. (2d), 152, 154, and in *Schumacher* v. *Eastern Bank and Trust Company*, 52 Fed. (2d) 925, 927.

[2] See authorities quoted in the Brief, *infra* p. 17.

tant questions of Illinois law in a way which conflicts with applicable Illinois decisions and statutes.

(a) Notwithstanding the clear statement of the Illinois Supreme Court in *Ward* v. *Johnson,* 95 Ill. 215, decided in 1880, that the power of an Illinois bank to receive deposits included the power to contract and agree with depositors as to terms and to secure the same by pledging assets, the Court of Appeals held that the language was not necessary to the decision, and that the case was not authoritative. The case has never been questioned in Illinois, and the courts of many states have recognized it as holding that Illinois banks do have such power.[1]

(b) The Court of Appeals overlooked the fact that the Illinois legislature by Sec. 10 of the State Depositary Act and Sec. 11 of the State Banking Act (*supra* p. 4) requiring the State Treasurer and receivers of closed banks, to take security by pledge of assets for deposits made in either state or national banks, had recognized that both state and national banks, as incidental to the right to receive deposits did have general power to make such pledges.

(c) The decision creates grave doubt as to the validity of pledges by state or national banks in Illinois as security for the deposit of state funds. The State Depositary Act was not submitted to referendum, and therefore did not operate to enlarge or affect the powers of Illinois banks. If therefore, as Judge Sparks holds, the power to accept deposits granted to Illinois banks by the banking laws of that state does not imply the power to pledge assets as security for public deposits, there is no power in Illinois banks to give security for the deposit of state funds and all existing pledges made for the deposit of state funds by Illinois banks and national banks in that state, are illegal and void.

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[1] See Footnote, Brief, p. 14.

(d) The Circuit Court of Appeals expressly held that the provisions of Section 51 of the Commission Form of Government Act limited the powers of Illinois banks notwithstanding it was entitled as an Act relating to cities and villages, did not purport to legislate relative to the powers of Illinois banks, and could not affect, either by abridgment or enlargement, powers of Illinois banks because it was not submitted to referendum as required by the state Constitution for legislation relating to banks.

It is respectfully submitted that the writ of certiorari herein prayed should issue for the reasons urged.

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BRIEF IN SUPPORT OF PETITION.

OPINIONS BELOW.

The opinion of the Circuit Court of Appeals is reported in 64 Fed. (2d) 721, and appears on pages 101-118 of the Record. The dissenting opinion of Judge Alschuler is on pages 118-126 of the Record. The opinion of the District Court is reported in 58 Fed. (2d) 341, and is on pages 55-62 of the Record.

JURISDICTION.

The judgment of the Circuit Court of Appeals was entered April 25, 1933 (R. 127). Petition for rehearing was denied June 1, 1933 (R. 128). Jurisdiction is invoked under Section 240a of the Judicial Code as amended by Section 1 of the Act of February 13, 1925 (c. 229, 43 Stat. 936, 938).

QUESTIONS PRESENTED.

The questions presented are stated in the Petition (*ante*, p. 2).

STATUTES INVOLVED.

Pertinent portions of the statutes involved are quoted in the Petition (*ante*, pp. 3-4) and in the appendix (*infra*, pp. 19-22).

STATEMENT.

The statement of the case is in the Petition (*ante*, p. 5).

ARGUMENT.

POINT I.

NATIONAL BANKS HAVE ALWAYS HAD THE POWER TO PLEDGE ASSETS AS SECURITY FOR DEPOSITS OF PUBLIC FUNDS.

We have been unable to find any expression, prior to the enactment of the National Bank Act in 1864, either by text writer or court of last resort, questioning the general power of banks to pledge assets as security for deposits of public funds. In the only cases in which the question had been raised, the courts had held that banks did have that power.

United States v. *Robertson*, 5 Peters 641 (1831);

Planters Bank v. *Sharp et al.*, 6 Howard (U. S. 47) 300, 323 (1848);

Smith v. *Lansing*, 22 N. Y. 520 (1860);

The National Bank Act as enacted in 1864 granted express power to do a banking business (*inter alia*) "by receiving deposits," and in another section of the same act required the Secretary of the Treasury to insist upon pledges of assets to secure deposits of government funds (Petition, *ante*, p. 3); Congress thus recognized that the grant of power to do a banking business by receiving deposits carried with it the incidental power to pledge assets as security for deposits of public funds.

The power of solvent national banks to give, as a part of their legitimate business, security for deposits of public funds is likewise necessarily implied from the further provision in the National Bank Act forbidding all transfers and pledges of assets by an

insolvent bank with a view to a preference of one creditor to another (Sec. 52 of the Act, Appendix, *infra*, p. 21).

Congress has further recognized the power as incidental to the right to receive deposits by subsequent laws which require custodians of public funds to obtain collateral security from the state or national banks in which they deposit public funds. Reference is made to the statutes referred to in the petition, *ante*, p. 3, and quoted in the appendix, *infra*, pp. 19-21.[1]

The Comptroller of the Currency has consistently taken the position that national banks have the power to give collateral security for deposits of public funds.[2] The uniform and long-continued interpretation by administrative officers of the Government has frequently been given great weight and regarded as persuasive as to the true construction to be given statutory provisions.[3]

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[1] Judge Sparks, in writing the majority opinion in the Circuit Court of Appeals in this case, regardless of the result which he reached, conceded that Congress, in enacting these statutes, "did not intend to create additional power for national banks in the respect mentioned, but incidentally recognized the power which it thought already existed under a former statute." (64 Fed. (2d) 721, at p. 723; R. 103.)

[2] See H. R. Report 1657, 71st Congress, Second Session, Appendix *infra*, p. 23.

In *Pottorff* v. *El Paso-Hudspeth Counties Road District of Texas*, 62 Fed. (2d) 498, (C. C. A. V. 1933) Judge Hutcheson said at p. 498 relative to a pledge of securities there involved: "The bonds were made, the securities deposited, in the due and regular course of the business of the bank with the approval of the National Banking Department, in accordance with the long standing custom and practice of the Department under the rulings of the Comptroller to approve the giving by national banks of security for deposits of public funds."

[3] *Corsicana National Bank* v. *Johnson*, 251 U. S. 68 (1919).
Kern River Co. v. *U. S.* 257 U. S. 154 (1921).
First National Bank of St. Louis v. *State of Missouri*, 263 U. S. 640, 658 (1923).

Point II.

THE AMENDMENT OF JUNE 25, 1930, TO SECTION 5153 OF THE REVISED STATUTES DOES NOT LIMIT THE POWERS PREVIOUSLY POSSESSED BY NATIONAL BANKS TO PLEDGE ASSETS AS SECURITY FOR THE DEPOSITS OF PUBLIC MONEYS OF STATES OR POLITICAL SUBDIVISIONS THEREOF.

It is fundamental, as Judge Sparks said in his opinion in the Circuit Court of Appeals, 64 Fed. (2d), 721, 728 (R. 114), that

> "* * * one statute will not be considered as repealing another statute by implication, unless the latter statute is positively repugnant to the former or a plain substitute for it. The intent to repeal must very plainly appear. * * * Such repeals will not be indulged in if there is any other reasonable construction. * * *"

The amendment of 1930 is not so phrased as to require the conclusion that Congress necessarily intended thereby to abridge the powers previously possessed by national banks (as stated in Point I) or to limit them thereafter to giving such security only as authorized by the laws of the states in which the banks are located. The amendment is not positively repugnant to, nor plainly in substitution for provisions of the National Bank Act previously in effect.

It reasonably appears when the history of the 1930 amendment is considered that it was not prompted by any question upon the part of either Congress or the Comptroller of the Currency as to the existence of the power, but the legislation was enacted merely for the purpose of setting at rest a doubt that seemed to exist in the minds of some of the officers of the State of Minnesota.[1] The amendment therefore may

[1] See excerpts from Senate Report No. 67, 71st Congress, 2d Session, referring to the letter from the Attorney General of Minnesota; and House Report No. 1657, 71st Congress, 2d Session. (Appendix, *infra*, pp. 22-24.)

reasonably be construed as intended to be merely a clarification of existing law, and that being the case it cannot be regarded as intended to repeal any part of the National Bank Act previously in effect. That it is susceptible to a reasonable construction other than that of limitation is further demonstrated by Judge Alschuler's construction that it constitutes an enlargement of the powers previously possessed by national banks. In his dissenting opinion, 64 Fed. (2d) 721, 732 (R. 122), he said:

> * * * "Far from thereby withdrawing from the national bank the power it theretofore had to pledge its assets to secure deposits of public funds, the act was, in my judgment an enlargement of its power, so that, in addition to a general right to pledge assets to secure such deposits, it thereafter had the right, notwithstanding any prior inhibition upon national banks from doing some or any of the things in that regard which might in some particular state be done by the banks thereof."

In addition, Circuit Judge Hutcheson, in *Pottorff* v. *El Paso-Hudspeth Counties Road District of Texas,* 62 Fed. (2d) 498 (C. C. A. V), and District Judge Wham, in deciding this case, 58 Fed. (2d) 341, 347, both held that the amendment did not constitute a limitation of the powers of national banks.

Judge Parker, in *Schumacher* v. *Eastern Bank and Trust Company,* 52 Fed. (2d), 925, 927, (C. C. A. IV) which was decided in 1931, subsequent to the enactment of the amendment of June 25, 1930, to Section 5153, Rev. Stat. (but without referring to the amendment), said:

> "And this Court has expressly upheld a pledge of assets by a national bank to secure a deposit of public funds. *Burrowes* v. *Nimcocks, supra.*"

Judge Parker also wrote the opinion in *Burrowes* v. *Nimcocks,* decided in 1929, and reported in 35 Fed. (2d) 152 (C. C. A. IV).

Point III.

STATE BANKS IN ILLINOIS HAVE GENERAL POWER TO PLEDGE ASSETS AS SECURITY FOR DEPOSITS OF PUBLIC FUNDS.

There is no constitutional or statutory prohibition in Illinois against banks securing deposits by pledge of assets.

In 1880 the Supreme Court of Illinois, in *Ward* v. *Johnson,* 95 Ill. 215, 237, 246, clearly expressed its opinion that Illinois banks did have such power. The court said that a grant of power to accept deposits carried with it the right to agree upon terms and to pledge assets as security therefor. The decision in *Ward* v. *Johnson* has not been questioned by any Illinois court.[1]

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[1] We have in mind, of course, the fact that Judge Sparks reached the conclusion that what the court said in *Ward* v. *Johnson* was not necessary to a decision of the issue presented. We insist that he was in error; that *Ward* v. *Johnson* does unqualifiedly hold that Illinois banks possess, as a power necessarily implied from the power to receive deposits, the right to agree upon terms and to pledge assets as security for deposits. The courts of last resort of the states of Arizona, Florida, Mississippi, New Mexico, North Carolina, Pennsylvania, Tennessee, Utah, and Missouri, recognize *Ward* v. *Johnson* as a decision holding that Illinois state banks have the power to pledge assets for deposits.

Williams v. *Earhart,* 34 Arizona 565; 273 Pac. 728, 730 (1929).

First Amer. Bank & Trust Co. et al. v. *Town of Palm Beach,* 96 Fla. 247; 117 So. 900, 902 (1928).

U. S. Fidelity & Guar. Co. v. *Bassfield,* 148 Miss. 109, 114 So. 26, 31 (1927).

Melaven v. *Hunker,* 35 N. M. 408; 299 Pac. 1075, 1076 (N. M. 1931).

Page Trust Co. v. *Rose,* 192 N. C. 673; 135 S. E. 795, 797 (1926).

Cameron v. *Christy,* 286 Pa. 405; 133 Atl. 551, 553 (1926).

Grigsby v. *People's Bank,* 158 Tenn. 182; 11 S. W. (2d) 673, 676 (1928).

Pixton v. *Perry,* 72 Utah 129; 269 Pac. 144, 145 (1928).

French v. *School Dist.* 223 Mo. App. 53; 7 S. W. (2d) 415, 416 (1928).

The Illinois Banking Act of 1887 and its revision in 1919, both approved by the People in accordance with the Illinois constitution of 1870 (referred to in Petition *supra*, p. 4), both provide for the organization of banks with power to receive deposits and impose no limitation upon the right to agree upon the terms under which deposits are accepted.

It must be presumed that the Illinois Legislature and the People, in enacting laws authorizing the organization of banks for the purpose of deposit, knew of the judicial construction of prior legislative enactments[2] by the Illinois Supreme Court in *Ward* v. *Johnson* and intended that banks should have the power to agree upon the terms upon which deposits would be accepted.

The Illinois Legislature, by requiring the State Treasurer in the case of state funds, and the receivers of closed banks, to obtain security by pledge of assets for deposits made in either state or national banks, has recognized that both state and national

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[2] *Village of Glencoe* v. *Hurford*, 317 Ill. 203, 219; 148 N. E. 78 (1925).
People v. *I. C. R. R. Co.* 314 Ill. 373, 377; 145 N. E. 731 (1924).
Svenson v. *Hanson*, 289 Ill. 242, 248; 124 N. E. 645 (1919).
United States v. *Merriam*, 263 U. S. 179, 189 (1923).
Central Paper Co. v. *Southwith*, 56 Fed. (2d) 593, 596 (C. C. A. VI 1932).

banks, as incidental to the right to receive deposits, do have the general power to make such pledges.[1]

Point IV.

THE GREAT WEIGHT OF AUTHORITY RECOGNIZES THAT BANKS HAVE GENERAL POWER TO PLEDGE ASSETS AS SECURITY FOR DEPOSITS OF PUBLIC FUNDS.

The great weight of authority recognizes that banks have general power to pledge assets as security for deposits of public moneys.[2] The courts in the following states have decided that the power exists: Arizona; Colorado; Ohio; Oklahoma; Florida; Indiana; Iowa; Kansas; Mississippi; Missouri; Mon-

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[1] Section 10 of the State Depositary Act and Section 11 of the Banking Act are referred to in the Petition *supra*, p. 4. Neither of these statutes expressly grants additional powers to state banks relative to pledge of assets as security for the deposits provided for. The situation with reference to these statutes is the same as that which Judge Sparks pointed out with reference to the acts of Congress requiring security for deposits of Federal funds. Both of the Illinois statutes provide for deposits in national as well as in state banks, and of course the Illinois Legislature did not intend to and could not enlarge the powers of national banks. Hence the necessity for the same conclusion reached with reference to the Federal statutes, viz.,—that the Illinois Legislature, in enacting these statutes, did not intend to create additional powers for state banks in the respects mentioned, but incidentally recognized and utilized a power which it thought already existed in state banks under the General Banking Act and the general law of the state, and in addition recognized and utilized a like general power which it also thought existed in national banks.

[2] See cases collected in 65 A. L. R. 1412.

tana; New Mexico; New York; North Carolina; Pennsylvania; Tennessee; and Utah.[1]

Most of the decisions of the state courts which have

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[1] *Williams* v. *Hall*, 30 Ariz. 581; 249 Pac. 755 (1926), followed in *Williams* v. *Earhart*, 34 Ariz. 565; 272 Pac. 728 (1929).

McFerson v. *Nat'l Surety Co.* 75 Colo. 482; 212 Pac. 489 (1923).

First Amer. Bank & Trust Co. et al. v. *Town of Palm Beach*, 96 Fla. 247; 65 A. L. R. 1398; 117 So. 900 (1928); followed in *Davis* v. *Knott*, 147 So. 276 (Fla. 1933).

Schornick v. *Butler*, 185 N. E. 111 (Ind. 1933), reversing an earlier decision of the Court in the same case reported in 172 N. E. 181.

Andrews v. *Odebolt Sav. Bk.*, 203 Iowa 1335; 214 N. W. 559 (1929), following *Richards* v. *Osceola Bank*, 79 Iowa 707; 45 N. W. 294 (1890).

Interstate National Bank v. *Ferguson*, 48 Kan. 732; 30 Pac. 237 (1892).

U. S. Fidelity & Guar. Co. v. *Bassfield*, 148 Miss. 109; 114 So. 26 (1929).

French v. *School Dist.* 7 S. W. (2d) 415 (1928, Mo. App.), followed in *Consolidated School Dist.* v. *Citizens Sav. Bank*, 21 S. W. (2d) 781 (1929, Mo. App.).

Ainsworth v. *Kruger*, 89 Mont. 468; 260 Pac. 1055 (1927).

Melaven v. *Hunker*, 35 N. M. 408; 299 Pac. 1075 (1931).

Smith v. *Lansing*, 22 N. Y. 520 (1860).

Application of Broderick, 252 N. Y. S. 68 (1931).

In re Bank of Spencerport, 255 N. Y. S. 482 (1932).

Page Trust Co. v. *Rose*, 192 N. C. 673; 134 S. E. 795 (1926), followed in *Richmond County* v. *Page Trust Co.* 195 N. C. 595; 142 S. E. 786 (1928).

Snider v. *Fulton*, 44 Ohio App. 238; 184 N. E. 839 (1933).

Mays v. *Board of County Commissioners, etc.* not yet reported decided by the Supreme Court of Oklahoma May 16, 1933; rehearing denied July 12, 1933; involving power of a national bank prior to the 1930 amendment.

Cameron v. *Christy*, 286 Pa. 405; 133 Atl. 558 (1926).

Grigsby v. *Peoples Bank*, 158 Tenn. 182; 11 S. W. (2d) 673 (1929).

Pixton v. *Perry*, 72 Utah 129; 269 Pac. 114 (1928).

held that banks do not have such power are distinguishable because of local statutory provisions.[3]

It is respectfully submitted that the writ of certiorari should be granted, and that upon a hearing the judgment of the Circuit Court of Appeals for the Seventh Circuit should be reversed and that of the District Court affirmed.

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[3] *Commercial Bank & Trust Co.* v. *Citizens Trust & Guaranty Co.* 153 Ky. 566; 156 S. W. 160 (1913); But see *City of Louisville* v. *Fidelity & Columbia Trust Co.* 245 Ky. 704; 54 S. W. (2d) 40 (1932), referring to Sessions Acts of 1932 (Ky.), c. 16, p. 46, which permit State Banks to pledge their assets to secure public deposits.

Divide County v. *Baird*, 55 N. D. 45; 212 N. W. 236 (1926).

Farmers & Merchants State Bank v. *Consolidated School Dist.* 174 Minn. 286; 219 N. W. 163 (1928).

Maryland Casualty Co. v. *Board of County Commissioners*, 128 Okla. 58; 260 Pac. 1112 (1926).

Foster v. *City of Longview*, 26 S. W. (2d) 1059 (Tex. 1930).

Austin v. *Lamar County*, 26 S. W. (2d) (Tex. 1930) 1062.

Porter v. *Canyon County Farmers Mutual Fire Ins. Co. of Idaho*, 45 Idaho 522; 263 Pac. 632 (1928).

Arkansas-Louisiana Highway Improvement Dist. v. *Taylor*, 177 Ark. 440; 6 S. W. (2d) 533 (1928).

Arkansas County Road Imp. Dist. v. *Taylor*, 185 Ark. 293; 47 S. W. (2d) (1932).

McCown v. *Edwards*, 185 Ark. 620; 48 S. W. (2d) 558 (1932).

APPENDIX.

FEDERAL ACTS RELATING TO THE DEPOSIT OF VARIOUS PUBLIC FUNDS IN STATE AND NATIONAL BANKS.

An act regulating deposits by the Comptroller of the Currency in state or national banks of receivership moneys of closed national banks (Act of June 3, 1864, Sec. 50; R. S. 5234; Chap. 106, 13 Stat. 114, as amended by Act of May 15, 1916, Chap. 121, 39 Stat. 121. 12 U. S. C. A. 192) provides:

> "* * * the Comptroller * * * shall require the depositary to deposit United States bonds or other satisfactory securities with the Treasurer of the United States for the safe-keeping and prompt payment of the money so deposited. * * *"

The "Federal Reserve Act," designating state banks and trust companies as depositaries of public moneys, (Act of Dec. 23, 1913, Chap. 6, Sec. 9, as amended by Act of May 7, 1928, Chap. 507, 45 Stat. 492; 12 N. S. C. A. 332) provides:

> "* * * The Secretary of the Treasury shall require of the banks and trust companies thus designated satisfactory security, by the deposit of United States bonds or otherwise, for the safe keeping and prompt payment of the public money deposited with them and for the faithful performance of their duties as financial agents of the Government."

An act regulating the deposit of postal savings funds in state and national banks (Act of Aug. 24, 1912, Chap. 387, Section 1, 37 Stat. 512; Act of May 18, 1916, Chap. 126, Section 2, 39 Stat. 159; 39 U. S. C. A. 759) provides:

> "* * * The board of trustees shall take from

such banks such security in public bonds or other securities, authorized by Act of Congress or supported by the taxing power, as the board may prescribe, approve, and deem sufficient and necessary to insure the safety and prompt payment of such deposits on demand. * * *"

An act regulating deposit by Secretary of the Interior in state and national banks in Oklahoma of net receipts from sales of lands and tribal property of Indians, (Act of Mar. 3, 1911, Chap. 210, Sec. 17, 36 Stat. 1070; 25 U. S. C. A. 156) provides:

"* * * Such depositories to be designated by him under such rules and regulations governing the rate of interest thereon, the time of deposit and withdrawal thereof, and the security therefor as he may prescribe. * * *"

"An act regulating deposit by Secretary of the Interior in state and national banks of community funds of Indian tribes, (Act of May 24, 1918, Chap. 86, Sec. 28, 40 Stat. 591; 25 U. S. C. A. 162) provides:

"* * * No tribal or individual Indian money shall be deposited in any bank until the bank shall have agreed to pay interest thereon at a reasonable rate and shall have furnished an acceptable bond or collateral security therefor, and United States bonds may be furnished as collateral security for either tribal or individual funds so deposited, in lieu of surety bonds: * * *."

An act regulating deposit by Secretary of the Treasury in state and national banks of proceeds from sales of Liberty bonds, certificates of indebtedness and war savings certificates, (Act of Sept. 24, 1917, Chap. 56, Sec. 8, 40 Stat. 291; Act of Oct. 3, 1917, Chap. 63, Sec. 214, 40 Stat. 308; Act of Apr. 4, 1918, Chap. 44, Sec. 5, 40 Stat. 504; 31 U. S. C. A. 771) provides:

"* * * Such deposits shall bear such rate or

rates of interest, and shall be secured in such manner, and shall be made upon and subject to such terms and conditions as the Secretary of the Treasury may from time to time prescribe. * * *"

The "Federal Farm Loan Act," designating Federal Land Banks and Joint Stock Land Banks as depositaries of public money, (Act of July 17, 1916, Chap. 245, Sec. 6, 39 Stat. 365; 12 U. S. C. A. 701) provides:

"* * * The Secretary of the Treasury shall require of the Federal land banks and joint stock land banks thus designated satisfactory security, by the deposit of United States bonds or otherwise, for the safe-keeping and prompt payment of the public money deposited with them, and for the faithful performance of their duties as financial agents of the Government. * * *"

SECTION 52 OF THE NATIONAL BANK ACT PROHIBITING TRANSFERS MADE IN CONTEMPLATION OF INSOLVENCY.

Section 52 of the National Bank Act prohibiting pledges and other transfers in contemplation of insolvency (Act of June 3, 1864, Chap. 106, Sec. 52, 13 Stat. 115 and the Act of March 3, 1873, Chap. 269, Sec. 2, 17 Stat. 603; R. S. Sec. 5242; 12 U. S. C. A. 91;) provides:

"All transfers of the notes, bonds, bills of exchange, or other evidences of debt owing to any national banking association, or of deposits to its credit; all assignments of mortgages, sureties on real estate, or of judgments or decrees in its favor; all deposits of money, bullion, or other valuable thing for its use, or for the use of any of its shareholders or creditors; and all payments of money to either, made after the commission of an act of insolvency, or in contemplation thereof, made with a view to prevent the application of its assets in the manner prescribed by this chapter, or with a view to the preference of one creditor to another,

except in payment of its circulating notes, shall be utterly null and void; and no attachment, injunction or execution, shall be issued against such association or its property before final judgment in any suit, action, or proceedings, in any State, country, or municipal court."

SEC. 51, ILLINOIS COMMISSION FORM OF GOVERNMENT ACT.

Sec. 51 of the Illinois Commission Form of Municipal Government Act of 1910 (Laws 1910, p. 12 Cahill's Ill. Rev. Stat. (1931) Chapter 24, Par. 374) provides:

"In addition to the other duties now imposed by law upon the treasurer of any city or village, the said treasurer shall make his daily deposits of such sums of money as shall be received by him from all sources of revenue whatsoever to his credit as treasurer of said city or village, in one or more banks situated in said city or village, to be selected by the president of said council, the commissioner of accounts and finance, and the treasurer of such city or village, or by any two of them, and any such bank, before any such deposit is made therein * * * shall also execute a good (and) sufficient bond, with sureties to be approved by the president of the said council, and conditioned that such bank will safely keep and account for, and pay over said money * * *."

EXCERPTS FROM REPORTS RELATING TO THE 1930 AMENDMENT TO R. S. 5153, SEC. 90, TITLE 12 U. S. C. A.

Senate Report No. 67, 71st Cong. 3d Sess., reporting favorably upon the bill (S. 486) refers to a letter from Attorney General of Minnesota, reading in part as follows:

"'The United States district court for this district has held that it may not thus pledge its assets to secure private deposits and the trend of authority

generally seems to be to the effect that a bank may not in any case pledge its assets to secure a deposit unless authorized by law so to do. The national banks of this State have pledged with the State and the various subdivisions thereof millions of dollars in Government and other bonds as security for public deposits. They are anxious to be permitted to do so, and we are willing that they should. Under the law as it now stands we may be taking a chance in accepting such pledges from the national banks, and we should like to have the chance removed by legislation in Congress which will specifically authorize such pledges by national banks.'"

House Report No. 1657, 71st Congress, 2d Sess. reporting favorably upon the bill (S. 486) amending R. S. 5153, Title 12, U. S. C. A., Sec. 90, states:

"The purpose of the bill is to permit any national banking association to give security in the form required by State law for State banks to secure deposits of public funds of a State or any political subdivision thereof."

The following letter dated May 26, 1930, addressed to the Chairman of the House Committee on Banking and Currency by Acting Secretary of the Treasury, Seymour Lowman, is there quoted in full as follows:

"Reference is made to S. 486, 'An act to amend Section 5153 of the Revised Statutes, as amended' which passed the Senate April 1, 1930, and which is now pending before the Committee on Banking and Currency of the House of Representatives.

While the office of Comptroller of the Currency has consistently taken the position that national banks have the right to give security for the safekeeping and prompt payment of public moneys of the State or political subdivision thereof deposited with such national banking associations, several recent decisions have thrown some doubt on this question with the result that in some States the State banks may secure the public deposits, but the officers of the State are in doubt about depositing with

the national banks in the absence of any specific law by Congress on the subject. It would be extremely helpful, therefore, if it is possible for your committee to report out, and the House pass, S. 486."